IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 326/2004

New India Assurance Company Limited
Opposite Judge's Court, Nainital Road,
Haldwani(Nainital) through its Divisional
Manger …. Appellant.

Versus

1- Smt. Premawati Devi
W/o late Chiranji Lal Sharma,

2- Mukesh Kumar Sharma
S/o Late Chirinji Lal Sharma,

3- Kumari Ranu Sharma
D/o late Chirinji Lal Sharma
Through her guardian Smt. Preemwati Devi

4- Rakesh Kumar Sharma
S/o Late Chirinji Lal Sharma,

All R/o Villae Shivnagar Thana Takurdwara
District Mordabad, presently residing at
Mohalla Maheshpura P.O. Kashipur,
District U.S. Nagar.

5- Jalauddin S/o Kaajim
R/o Mohalla Fataihullah Ganj
Kasba & Thana Thakurdwara
District Moradabad ….Respondents

Sri T.A. Khan, learned counsel for the appellant.
Sri B.S. Parihar, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal,J.

Dated: 13-06-2006

The present appeal, U/S 173 of the Motor Vehicles Act has been preferred against the judgment and award dated 6-8-2004, passed by M.A.C.T./District Judge, Udham Singh Nagar, in MACP No. 227 of 2003, Smt. Premwati Devi and others Vs. Jalaluddin and another, whereby the claimants were awarded compensation to the tune of Rs. 4,15,000/- along with interest @ 6% per annum from

the date of the claim petition till the final payment against the New India Assurance Company.

2- Brief facts of the case are that on 25-8-2003, at about 4.30 P.M. on Thakurdwara-Moradabad road near Village Chamarpura Raghunathpur, Naresh Kumar Sharma was crossing the road for urinating, Mini Tata 407 Truck No. U.P.- 21/D- 9333 came there rashly and negligently and hit Naresh Kumar due to which he sustained grievous injuries and succumbed to the injuries. At the time of the accident the deceased was aged 30 years and was earning Rs. 3500/- per month from the work of electrician in some private firm. The claimants are the mother, sister and brother of the deceased. The claimants filed the claim petition for compensation of Rs. 15,00,000/-.

3- The O.P. owner of the offending truck No. U.P. 21/9333 filed the W.S. and denied the accident by his vehicle. It was alleged by the owner of the truck that the accident had occurred due to his own fault of the deceased and he is not liable to pay the compensation of Rs. 15,00,000/-.

4- The New India Assurance Company, the insurer of the offending truck also filed its W.S. alleging therein that the accident had occurred due to own fault of the deceased and the Company is not liable for any compensation.

5- On the basis of pleadings of the parties, the Tribunal framed issues. In support of his case the claimants produced Smt. Premwati Devi as P.W.1, Vipin Kumar, P.W.2, eye witness of the accident and Irshad Hussain as P.W.3 and also filed some documentary evidence. O.Ps. did not adduce any oral evidence but the owner of the vehicle filed documents relating to insurance and fitness.

6- The Tribunal after having perused the material on record and hearing learned counsel for parties, awarded compensation of Rs. 4,15,000/- along with 6% per annum interest against the insurer of the offending truck.

7- Feeling aggrieved, the New India Assurance Company has come up in appeal before this court.

8- We have heard the learned counsel for the parties and perused the record.

9- The record reveals that the accident took place on 25-8-2003 at 4.30 P.M. near Tiwari Hotel Thakurdwara-Moradabad Road. The evidence shows that the deceased Naresh Kumar Sharma was crossing the road when he was hit by Mini Tata 407 Truck No. U.P. -21/D- 9333. Naresh Kumar Sharma on account of this accident sustained grievous injuries and he died on account of those injuries. The claimants have produced Vipin Kumar an eye witness of the accident who has stated that the accident took place in front of his 'Dhaba'. This witness has also stated that the truck in question was being driven rashly and negligently. The factum of accident is also established from the first information report, which was lodged at the police station. The appellant did not adduce any evidence in order to rebut this aspect that the truck in question was not being driven rashly and negligently at the time of the accident, therefore, we are of the view that the Tribunal has rightly held that the offending truck in question was responsible for the rash and negligence, which resulted the accident in which Naresh Kumar Sharma, sustained grievous injuries and he ultimately succumbed to those injuries.

10- As far as the quantum of compensation is concerned, the evidence indicate that the deceased was working with Guru Nanak Electrical and was getting Rs. 3,500/- per month as his salary. Irshad Hussain has been produced as P.W.3, who has established that the income of the deceased was Rs. 3,500/- per month. No evidence could be adduced by the appellant before the Tribunal in order to contradict the evidence of the claimant. Therefore, in absence of any evidence adduced by the appellant, rebutting the monthly income of the deceased, there can be no reasonable ground for disbelieving the evidence adduced by the claimant. Smt. Premwati, mother of the deceased, has been produced as a witness before the court, who has deposed that the deceased used to pay her Rs. 2,000/- per month. Therefore, there cannot be any doubt that the monthly financial dependency of the claimants is Rs. 2,000/-. The age of the deceased was 34 years at the time of the accident, therefore, in case if the financial dependency of the claimants is considered to be Rs. 2000/- per

month then the same comes to Rs. 24000/- per annum and keeping in view the age of the deceased if the multiplier of 17 is adopted then the total amount of compensation comes to Rs. 4,08,000/-.

11- Apart of the aforesaid amount of compensation the Tribunal has also awarded an amount of Rs. 7,000/- to the claimants under other heads and we are not inclined to interfere in this finding.

12- The vehicle in question was insured with New India Assurance Company at the time of the accident and there is no evidence in denial to the same. Therefore, the liability to make the payment is with the insurer of the vehicle.

13- On the basis of the assessment of evidence on record, we come to the conclusion that the impugned judgment and award passed by the Motor Accident Claim Tribunal is just, adequate and proper and needs no interference.

14- The appeal lacks merit and is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and award dated 6-8-2004, passed by M.A.C.T./District Judge, Udham Singh Nagar, in MACP No. 227 of 2003, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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